GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

RWS&S Dept . – Andhra Pradesh Drinking Water Supply Corporation (APDWSC) - Implementation of projects in APDWSC on PPP mode for PPP Projects of the Department – Rules for procurement of projects through Public Private Partnership (PPP) model in RWS Department – Orders - Issued.

PANCHAYAT RAJ AND RURAL DEVELOPMENT (RWS.II) DEPARTMENT

G.O.Ms.No.63 **Dated:01.06.2018**

Read :-

From the Managing Director, APDWSC, Lr.No.APDWSC/PPP Project /Draft rules /2018, Dt.03.04.2018.

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ORDER:

In the reference cited, the Managing Director, APDWSC, A.P., Vijayawada has submitted that the Andhra Pradesh Infrastructure Development Enabling Act, 2001; Section 1(3) states that the act shall apply to all infrastructure projects implemented through Public Private Partnership in the sectors enumerated in schedule III of the Act'. An ordinance was issued on 19th April, 2017; modifying section 14 of the Act as, ''Government or any Government Departments or Infrastructure authority or any Government Public Sector undertaking or Government Agency or Local body may conceptualize, develop and implement any infrastructure project by following the procedures prescribed by respective departments or such agencies referred above". He has also stated that in accordance with the above provisions of the act, there is a necessity to frame relevant rules for Department for procurement of projects by Public Private Partnership model in the Department. The rules ought to be framed keeping in mind the current scenario of procurement and at the same time enabling the execution agency to follow transparent procurement procedures. Accordingly, draft Department rules for procurement of projects through Public Private Partnership (PPP) model by the Department are prepared.

2. Government after careful examination of the matter hereby approve the Rules for procurement of projects through Public Private Partnership (PPP) model in RWS Department. The Rules are annexed to this order.

3. The Managing Director, APDWSC, A.P., Vijayawada shall take further necessary action in the matter and follow the norms scrupulously.

4. A copy of this order is available on the Internet can be accessed at www.ap.gov.in/goir.ap.gov.in.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr.K.S.JAWAHAR REDDY
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Managing Director,
Andhra Pradesh Drinking Water Supply Corporation, A.P, Vijayawada.

Copy to:
The OSD to Hon'ble Minister (PR, RD & ITE &C)
The P.S. to Principal Secretary to Government (PR & RD).
Sc/Sf

//FORWARDED BY ORDER//

SECTION OFFICER

(PTO for Annexure)

Annexure to G.O.Ms.No.63 , PR &RD (RWS.II) Department, Dt.01.06.2018

CHAPTER I: INTRODUCTION

Rule1: Responsibility of Department

1. The Department shall be responsible for the implementation of these Rules while preparing, procuring, and managing PPP Projects.

Rule 2: Probity and transparency

1. The execution agency/authority must carry out the responsibilities related to preparation, procurement and management of PPP Projects with complete probity and in a fair and transparent manner.
2. The execution agency/authority shall not include in the Tender Documents any condition or specification which favours or is likely to favour any individual Respondent or a group of Respondents.
3. All members of the Project Management Team and Tender Evaluation Committee, including the transaction advisor and/or consultants, as the case may be, must disclose any potential conflict of interest with the PPP Project.
4. The Department shall evaluate such disclosure and formulate and implement an appropriate response to such conflict of interest, such as recusal of the official from any position where the conflict of interest could affect a decision.
5. The execution agency/authority shall record all such disclosures in the personnel file of the declarant and in the record of the Tender Proceedings.

Rule 3: Modifications and guidance materials

The Department shall be competent to issue suitable guidelines from time to time regarding:

(a) modifying the systems and procedures established by these Rules;

(b) for guidance in respect of the application and furtherance of these Rules.

Rule 4: Rules not in derogation of other laws

The Rules are in addition to and not in derogation of any other central law or state law for the time being in force.

Chapter – II, PPP project Pre Development

Rule 5:Identification of a PPP Project

The Department shall identify potential projects that can be implemented on PPP basis. Such identification shall be based on social or economic priority, value for money, suitability for PPP or achieving efficiency in service delivery (or asset creation, as the case may be).

Rule 6: Appointment of execution agency/authority

1. The Department shall appoint an execution agency/authority who shall be responsible for the preparation and procurement of the PPP Project, up to signing of the Concession Agreement.
2. The execution agency/authority shall be responsible for the analyses related to the PPP Project and maintaining all documentation related to the PPP Project.
3. The Department may appoint a Project Management Team to support the Execution Authority/agency, depending on the size and complexity of the PPP Project.
4. The execution agency/authority shall have the following responsibilities:

   (a) Defining the objective of the PPP Project;

(b) Undertaking consultations with stakeholders for the identification of the PPP Project and documenting the same;

(c) Establishing the suitability of a project for PPP and determining the value for money of such project in accordance with the Rules;

(d) Assessing payment or revenue mechanism for the PPP Project and establishing its affordability for the Contracting Authority and potential users;

(e) Developing the structure of the PPP Project;

(f) Undertaking the processes for appointment of a transaction advisor, if required, and documenting the same;

(g) Undertake the appointment of a legal advisor, if required, and documenting the same;

(h) Planning, budgeting and implementing the pre-Feasibility Study, if any, Feasibility Study and procurement process and documenting the same;

(i) Obtaining necessary approvals from relevant authorities for developing the PPP Project;

(j) Efficiently managing all key activities related to the development and procurement of the PPP Project, on behalf of the Contracting Authority; and

(k) Supporting the Contract Management Team in an efficient transition after the issue of Letter of Award to the Preferred Bidder.

Rule 7: Feasibility Study

1. The Execution agency/authority may appoint an external advisor to undertake the Feasibility Study.

2. Funding for aFeasibility Study may be met from the budget of the Department or may be sourced from project development agencies or other institutions.

3. The Feasibility Study of the PPP Project shall include but will not be limited to the following:

(a) **Market Assessment** to assess the need for and appropriate scope of the project.This would include a needs analysis, options analysis and demand forecast;

(b) **Technical feasibility** and technical parameters based on the market analysis,including specifications of required facilities and detailed project costing;

(c) **Legal Analysis** to assess the impact of the applicable laws and regulations;

(d) **Preliminary social and environmental feasibility**, including the requirementsfor environmental and social impact assessments and for the associated mitigations;

(e) **Project structuring** in terms of the recommended PPP mode or refinement of thePPP mode selected at the pre-feasibility stage;

(f) **Financial analysis** incorporating a projected revenue structure, financial viabilityand affordability of the PPP Project for the Contracting Authority and the end users and assessing any need for financial support from the public sector through the Viability Gap Funding or otherwise;

(g) **Risk Assessment** of the PPP Project, involving the identification of risk andallocation or risk to the party that is best able to manage each risk. The Feasibility Study may also include a quantification of the potential Contingent Liabilities that the Contracting Authority may have to incur over the project cycle;

(h) **PPP Suitability analysis** involving an assessment of the suitability of the projectto be undertaken as a PPP;

(i) **Value for money analysis**, for evaluating the suitability for implementing aproject on a PPP basis. . The procedure for undertaking value for money analysis shall be in such manner as may be specified by the DOE.

(j) **Project implementation schedule**, including an outline of the proposed PPPprocurement and award process through to technical and financial close, an outline of the construction schedule and target operation date.

4. The execution agency/authority shall prepare a Feasibility Report

Rule 8: Internal Clearance to Proceed with Project Development

1. The Executing agency/authority shall submit the Feasibility Report and the supporting documents to the department who in turn may approve the Report if the same is in compliance with the Rules. If the Department grants clearance to proceed with the PPP Project, the Project Officer shall proceed with the preparation and procurement of the PPP Project.

2 The Executing agency/authority shall prepare a budget for the development and procurement processes of the PPP Project and obtain the approval of Contracting Authority for the same. The Executing agency/authority shall prepare a work plan for the preparation phase of the PPP Project with specific activities and timelines. The work plan shall be reviewed from time to time and updated to reflect progress.

CHAPTER III: PPP PROJECT PREPARATION

Rule 9: Appointment of consultants and advisors

1. The executing agency/authority may engage advisors for undertaking the preparation and procurement of the PPP Project in an efficient, fair and transparent manner. The executing agency/authority may also engage financial, legal and technical consultants.

2. The executing agency/authority may alternatively choose to engage transaction advisors to be responsible and liable for advice related to all aspects of development and procurement of a PPP Project, including financial, legal and technical advice.

3. Prior to undertaking the process of engagement of consultants and/or transaction advisors, the executing agency/authority shall prepare a procurement plan for consulting and/or advisory services which shall necessarily cover the following aspects:

(a) Duration of the consulting and/or advisory services;

(b) Terms of reference of the consulting and/or advisory services;

(c) Milestones and schedule of the consulting and/or advisory services;

(d) Skills, expertise and knowledge needed from each consultant and/or advisor - eligibility and qualification;

(e) Estimated budget for the consulting and/or advisory services;

(f) Procurement schedule for and/or advisory consulting services; and

(g) Any other matter concerning the procurement of consulting and/or advisory services.

Rule 10: Identifying the procurement method for the PPP Project

1. A two-stage, open and competitive tendering shall be the preferred mode of procurement for a PPP Project, save in situations where exceptions have been provided under these Rules.

2. For PPP Projects less than Rs. 100,00,00,000 (Rupees Fifty Crore), a single stage, two or three cover, open and competitive tendering may be adopted

Rule 11: Two stage open competitive tendering

A two-stage open competitive tendering shall include the following stages:

(a) RFQ Stage that shall involve short-listing Qualified Applicants
(b) RFP Stage that shall involve a selection of the Preferred Bidder who quotes the most advantageous Final Offer

Rule 12: Open competitive tendering with Request for Expressions of Interest

1. The executing agency/authority may adopt multi-stage open, competitive tendering involving a Request for Expressions of Interest, followed by a two stage process as per Rule 11as the case may be, in PPP Projects where the Contracting Authority is unsure of the likely interest from private entities in the PPP Project, or where it is keen to seek suggestions from private entities on how best to design the project scope or other parameters of the PPP Project.

CHAPTER IV: PROJECT PROCUREMENT PLANNING

Rule 13: Formation of Technical cum Tender Evaluation Committee

1. The Department shall form a Technical cum Tender Evaluation Committee for the following purposes:

(a) For approval of bid documents (RFQ/RFP/any other stage as deemed necessary)
(b) Evaluation of Responses received as part of the Tender Proceedings and approval of the bids

2. The membership of the Technical cum Tender Evaluation Committee shall consist of:

   (a) The head of the Execution agency/authority, who shall serve as the chairman of the committee;

   (b) Representative of Ministry of Finance, or equivalent department

   (c) Technical head of the Execution agency/authority who shall serve as member convenor;

   (d) Engineering in Chief, RWS & S Department;

   (e) Engineering in Chief, Panchayat Raj or Public Health, as decided by Department who shall serve as member

   (f) Invitees, as deemed necessary by the chairman.

Each member of Tender Evaluation Committee shall declare that they have no conflict of interest in the PPP Project. In case any member of the Tender Evaluation Committee has any conflict, then such member shall forthwith, without any delay disclose details of such conflict.

Rule 14: Appointment of Independent Monitor

1. The Department shall appoint an Independent Monitor to oversee and ensure the transparency in the Tender Proceedings and public budget allocation processes.

2. The Department shall

   (a) provide complete information, documentation and other information related to the PPP Project to the Independent Monitor in a timely and transparent manner.

   (b) extend co-operation and necessary support as may be required by the Independent Monitor for discharging its role under the Rules.

3. The Independent Monitor shall be a representative of Ministry of Finance or from the Ministry of Law, or a representative of equivalent department, or from an independent audit firm, or an independent expert or body of repute.

4. The Independent Monitor shall:

(a) Monitor and record the conduct of the participants and the proceedings during the procurement and contract finalisation stages; and

(b) Review all documentation and attend all internal and external meetings.

(c) not approve any decision or document. It has the responsibility to certify that the preparation and procurement of a PPP Project is in conformance with the Rules.

(d) report directly to the Department or any entity to which such power has been expressly delegated by the Department.

(e) submit an independent report to the Approving Authority or any entity to which such power has been expressly delegated by the Approving Authority to verify that activities have been conducted as per the provisions of the Rules and document deviations or exceptions if any.

CHAPTER V: GENERAL PROVISIONS REGARDING PROCUREMENT PROCESS

Rule 15: Form of communication

1. Subject to provisions of the Rules, communication between Respondents and the Contracting Authority shall be in a form that provides a record of the content of the communication.

2. Any document, notification, decision or any other information generated in the course of the procurement process and communicated as required by the Rules or in the course of a meeting or forming part of the record of procurement proceedings shall be in a form that serves as a record of the content of the information and that is accessible so as to be usable for subsequent reference.

Rule 16: Language of communication

The Tender Documents shall be formulated in English. The Contracting Authority may, at its discretion, formulate the Tender Documents in any other language, including any official language of India and foreign languages, to ensure that a larger number of Respondents can comprehend and evaluate the Tender Documents.

Rule 17: Publication of advertisement/notification of Tender Documents

1. The Execution agency/authority shall publish the advertisement/notification of the Tender Documents in at least one English daily and one Telugu daily of national circulation. Based on the nature of the procurement and the potential Respondents, the Execution agency/authority may, at its discretion, issue the advertisement/notification of the Tender Documents in newspapers of other languages, including foreign languages.

2. The Execution agency/authority shall publish the advertisement/notification of the Tender Documents on its own website.

3. The Execution agency/authority may, depending on the nature of procurement, issue the advertisement/notification of the Tender Documents in trade journals or business publications or other periodicals.

4. The Execution agency/authority shall ensure that the advertisements/notification of the Tender Documents mentions the website of the Execution agency/authority from where the Tender Documents can be downloaded.

5. The Execution agency/authority shall publish any addenda or corrigenda, following an advertisement/notification of the Tender Documents in the same dallies and trade journals or business publications or other periodical in which the said advertisement/notification was issued and on its own website. Once advertisement/notification of the Tender

Documents is made, the Executing Authority shall make available the corresponding Tender Documents in the manner, form, place, date and time and such other conditions as may be specified in the advertisement/notification.

Rule 18: Use of e-Tender system

The Executing agency/authority may utilize the system of e-tender, provided the Contracting Authority puts in place effective IT infrastructure to ensure security, integrity and effectiveness of the procurement proceedings.

Rule 19: Disqualification of Respondents

1. The Execution agency/authority may disqualify a Respondent if it finds at any time that a Response was materially inaccurate or materially incomplete.

2. Execution agency/authority may not disqualify a Respondent on the ground that the Response was inaccurate or incomplete in a non-material respect. The Respondent may, however, be disqualified if it fails to promptly remedy such deficiencies upon request by the Execution agency/authority.

3. The Execution agency/authority shall disqualify a Respondent from the Tender Proceedings if it is of the view that:

   (a) the Respondent has offered, given or agreed to give, directly or indirectly, to any current or former officer or employee of the Execution agency/authority or other governmental authority a gratuity in any form, an offer of employment or any other thing of service or value, so as to influence an act or decision of, or procedure followed by, the Execution agency/authority in connection with the procurement proceedings; or

   (b) a Conflict of Interest exists as per the provisions or

   (c) one or more of the qualification criteria have not been met by the Respondent; or

   (d) the Respondent has made a material misrepresentation; or

   (e) the Respondent has been blacklisted by the Execution agency

In the event that the Respondent is a consortium, the disqualification shall be effective against every member of the consortium.

4. Any decision of the Execution agency/authority to disqualify a Respondent and the reasons thereof shall be included in the record of the Tender Proceedings and shall promptly be communicated to the Respondent concerned.

5. If the Execution agency/authority becomes aware of disqualification on the grounds specified above, after the Preferred Bidder has issued the LOA or after the Concession Agreement has been signed, the Execution agency/authority shall terminate the Concession Agreement or LOA, as the case may be, by a communication in writing

6. If the Preferred Bidder is disqualified after the Bids have been opened and evaluated, the Execution agency/authority may:

   (a) invite the immediate next qualified Bidders to match the bid of the Preferred Bidder or resubmit their Bids in accordance with the RFP; or

   (b) take any such measure as may be deemed fit in the sole discretion of the Execution agency/authority, including annulment of the Tender Proceedings.

Rule 20: Blacklisting of Respondents

1. The Execution agency/authority shall create, maintain and publish a blacklist of Respondents in the following circumstances:

   (a) the Respondent has been disqualified by the Execution agency/authority; or

   (b) the Respondent is guilty of fraud in respect of the Tender Proceedings; or

(c) any action of another government entity that amounts to blacklisting of the Respondent for any procurement process and such blacklisting subsists at the time of commencement of the Tender Proceedings; or

(d) the Respondent has submitted a false certificate of no Conflict of Interest, in the event such certificate is required by the Execution agency/authority.

2. The Execution agency/authority shall:

(a) specify in the blacklist the reasons for and the period of the blacklisting and other appropriate information;

(b) update the blacklist at least on a monthly basis.

3. Respondents who have been blacklisted by the Execution agency/authority shall be notified in writing along with the details of reasons of blacklisting at least 21 (twenty one) days in advance of such blacklisting.

4. If the Respondent disputes the blacklisting within a period of not more than 10 (ten) days from the receipt of the notification of blacklisting, the Execution agency/authority shall offer such Respondent a hearing. The Respondent shall have the right to be represented by legal counsel at such hearing as well as to present evidence and cross-examine witnesses.

Rule 21: Conflict of Interest

It shall be the responsibility of Contracting Authority to ensure any Respondent does not have a conflict of interest that affects the Tender Proceedings ("**Conflict of Interest**"). An Applicant shall be deemed to have a Conflict of Interest, if:

(a) any other Respondent, its members or any associate or constituent thereof have common controlling shareholders or other ownership interest, as defined in Model Request for Proposal for PPP Projects dated November 30, 2007 issued by PF-II Section, Department of Expenditure, Ministry of Finance, as amended from time to time. Provided, that this sub-Rule shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013;

(b) a constituent of such Respondent is also a constituent of another Respondent; or

(c) such Respondent, or any associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Respondent, or any associate thereof has provided any such subsidy, grant, concessional loan or subordinated debt to any other Respondent, its member or any associate thereof; or

(d) such Respondent has the same legal representative for purposes of the Tender Proceedings as any other Respondent; or

(e) such Respondent, its member or any associate thereof, has a relationship with another Respondent, or any associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Response of either or each other; or

(f) such Respondent, its member or any associate thereof, has participated as a consultant to the Execution Agency/authority in the preparation of any documents, design or technical specifications of the PPP Project; or

(g) if any legal, financial or technical adviser of the Execution Agency/authority in relation to the PPP Project is engaged by the Respondent, its member or any associate thereof, as the case may be, in any manner for matters related to or incidental to the PPP Project. Provided that this sub-Rule shall not apply where such adviser was engaged by the Respondent, its member or associate in the past but such engagement expired or was terminated 6 (six) months prior to the date of issue of concerned Tender Document or where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the PPP Project.

Rule 23: Acceptance or rejection of Responses

1. The Execution agency/authority may, at its discretion at any time and without assigning reasons, accept or reject any or all Responses or annul the Tender Proceedings, without incurring any liability or any obligation in respect of such acceptance, rejection or annulment. In the event that the Execution agency/authority rejects or annuls all the Responses, it may, in its discretion, invite all Respondents to submit fresh Responses.

2. The Execution agency/authority may reject a Response if:

   (a) at any time, a material misrepresentation is made or uncovered, or

   (b) the Respondent does not provide, within the time specified by the Execution agency/authority, the supplemental information sought by the Execution agency/authority for evaluation of the Response.

Rule 24: Schedule of Tender Proceedings

1. The Execution agency/authority shall clearly mention in the applicable Tender Document the schedule of each stage of the Tender Proceedings, in terms of the dates of the key milestones of that stage.

Rule 25: Clarifications on Tender Documents

1. The Execution agency/authority shall permit Respondents to seek clarifications on the Tender Documents and shall specify a last date for the submission of such clarifications in the Tender Documents. Provided that the clarifications may be sought from the Execution agency/authority only in writing.

2. The Execution agency/authority shall specify in the Tender Documents the email address and/or postal address to which the clarifications may be sent.

3. The Execution agency/authority shall respond to any queries or requests for clarification received from a Respondent within a reasonable time prior to the Due Date, such that Respondent can make its Response in a timely fashion.

Rule 26: Pre-submission meeting

1. Post issue of the RFQ or RFP, as the case may be, the Execution agency/authority may, at its discretion, organize a pre-submission meeting for the purpose of clarifying the queries and understanding the concerns of Respondents.

2. The Execution agency/authority shall consider comments and suggestions provided by the Respondents in the pre-submission meeting and, where appropriate, revise the Tender Documents.

3. The pre-submission meeting shall not be a substitute for any other manner of communication of queries by Respondents.

4. The Executing agency/authority shall maintain the minutes and list of attendees of the pre-submission meeting and circulate the same to all attendees.

Rule 27: Modification of Tender Documents and Responses

1. At any time prior to the Due Date, the Execution agency/authority may, for any reason, whether on its own initiative or as a result of a clarification, suggestion or comment of a Respondent, modify the Tender Documents by issuing an addendum or corrigendum.

2. Any such addendum or corrigendum shall be communicated to all concerned and will be binding on all Applicants or Bidders, as the case may be.

3. Unless otherwise stipulated in Tender Documents, a Respondent may modify or withdraw its Response prior to Due Date. The modification or notice of withdrawal will be effective if it is received by the Execution agency/authority prior to the Due Date. In case of a Bid, such withdrawal or modification shall not result in forfeiture of the Bid Security.

Rule 28: Manner, place and Due Date for submission of Responses

1. The Execution agency/authority:

   (a) shall specify in the Tender Documents, the manner, place and Due Date for submission of Responses, including the name and postal address of the person concerned to whom the Responses are to be sent;

   (b) may, prior to the Due Date, extend the Due Date in its discretion. In such instance, the Execution agency/authority shall publish notice of such extension, in accordance with the provisions of Chapter V:.

2. A response received by the Execution agency/authority after the Due Date shall not be opened and shall be returned unopened to the Respondent.

Rule 29: Test of responsiveness

1. Prior to evaluation of Responses, the Execution agency/authority shall determine whether each Response is responsive to the requirements of the applicable Tender Document.

2. A Response shall be considered responsive only if all items of information required from the Responses is submitted in the specified format and it is not materially inaccurate or incomplete and it is not conditional.

3. The Execution agency/authority shall reject all Responses which are non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Execution agency/authority in respect of such Response.

Rule 30: Clarifications on qualification information

1. The Execution agency/authority may, at any stage of the Tender Proceedings, ask any Respondent for clarifications on its Response, in order to assist in the evaluation of such Response.

2. Provided that the Execution agency/authority shall:

   (a) not seek, offer or permit any substantive change to the submission (including changes aimed at qualifying/passing a Respondent, as the case may be);

   (b) not engage in negotiations with a Respondent with respect to the submission, pursuant to a clarification that is sought under this Rule; and

   (c) maintain in the record of Tender Proceedings, all communications generated under this Rule.

Rule 31: Confidentiality

The Execution agency/authority shall treat all information, submitted as part of a Response, in confidence and will require all those who have access to such material to treat the same in confidence. The Execution agency/authority shall not disclose any such information unless:

(a) directed to do so by any statutory entity that has the power under law to require such disclosure, or

(b) such disclosure is to enforce or assert any right or privilege of the statutory entity and/or the Execution agency/authority, or

(c) is required to do so by law or in connection with any legal process.

Rule 32: Record of Tender Proceedings

Amongst other elements considered necessary by the Execution agency/authority, the record of Tender Proceedings should necessarily contain the following:

(a) subject matter of the procurement process;

(b) basic information (including names, addresses, authorized representatives) of Respondents;

(c) statement of the reasons and circumstances relied upon by the Execution agency/authority for decisions as part of the procurement process;

(d) a summary of requests for clarification and the responses thereof;

(e) statement of reasons for rejection of Applications or Bids;

(f) principal terms of the Concession Agreement; and

(g) the deviations from the model tender documents.

Rule 33: Code of Conduct

A code of conduct for officers or employees of Execution agency/authority shall be documented and implemented. It shall address, inter alia, the prevention of conflicts of interest in procurement and, where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declarations of interest in particular procurements, screening procedures and training requirements. The code of conduct so documented shall be promptly made accessible to the public and systematically maintained

CHAPTER VI: EXPRESSION OF INTEREST

Rule 34: Applicability of REOI

1. The Execution agency/authority may adopt a multi-stage, open, competitive tendering involving a Request for Expressions of Interest, followed by a two or three-stage process as the case may be, in PPP Projects where the Execution agency/authority is unsure of the likely interest from private entities in the PPP Project, or where it is keen to seek suggestions from private entities on how best to design the project scope or other parameters of the PPP Project.

2. The Expression of Interest shall not be used to either shortlist or disqualify Bidders and any entity which have not submitted EOIs shall also be allowed to participate in the RFQ Stage as per terms and conditions that may be specified thereof.

Rule 35: Preparation of the REOI

1. The Execution authority/agency shall prepare the REOI.

2. The REOI shall contain:

   (a) the description of the PPP Project

   (b) the request for expressions of interest.

   (c) a closing date for seeking clarifications.

3. The REOI shall specify sufficient time to the interested parties to consider the REOI, form a team if they decide to express interest as a consortium, respond with any questions or requests for clarification, and to prepare and submit their EOIs.

Rule 36: Issue of the REOI

1. The Execution agency/authority shall seek registration of Applicants prior to the issue of the REOI. In the case of electronic issuance of the REOI, an online form shall be provided where as in the case of issue of a hardcopy, an application letter seeking specific details will be sought. Applicants shall be asked to provide details including but not limited to the following:

   (a) Name of the organisation;

   (b) Contact person with designation;

(c) Address;

(d) Telephone and fax numbers; and

(e) E-mail address.

2. The REOI shall be made available only against registration of Applicants with the Execution agency/authority.

The Execution agency/authority may convene meetings, to interact with Applicants, so as to facilitate greater interest and understanding of the proposed PPP Project among potential private partners.

Rule 37: Schedule of REOI

The following minimum periods shall be followed by the Execution agency/authority while determining the schedule of the REOI process:

(a) The Due Date shall be no later than 2 (two) weeks from the date of advertisement/notification of the REOI;

(b) The meeting if provided for, shall be held not less than 7 (seven) days before the Due Date;

(c) The clarifications on queries of Applicants shall be issued not less than 4 (four) days before the Due Date; and

(d) Corrigenda or notifications of amendments in the EOI shall be issued not less than 3 (three) days before the Due Date.

CHAPTER VII: REQUEST FOR QUALIFICATION

Rule 38: Request for Qualification

Request for Qualification Stage shall be undertaken to:

(a) make public the information on the PPP Project and the services/infrastructure that the Execution agency/authority seeks to obtain;

(b) communicate the proposed timeframes and the qualification criteria;

(c) ascertain the level of interest in the PPP Project and provide an avenue through which Respondents can comment on the proposed PPP Project; and

(d) allow the Execution agency/authority to qualify Applicants for the RFP Stage who are most capable of meeting project objectives over the project term.

Rule 39: Preparation of the RFQ

1. The Executing agency/authority shall prepare the RFQ;

2. The Executing agency/authority shall ensure that:

(a) the RFQ contains sufficient information to allow potential Respondents to form a view on whether they have sufficient capabilities and identify potential partners for the PPP Project; and

(b) the information requested from the Applicants is such that the Execution agency/authority can qualify the Applicants.

Rule 40: Contents of RFQ

1. The RFQ document shall contain the following:

(a) a description of the PPP Project, the estimated project costand the project structure. This section shall also have the description and schedule of the Tender Proceedings;

(b) the conditions of eligibility of Applicants, the information sought from Applicants for qualification and the form and procedure of the Application;

(c) a description of the parameters and method of evaluating qualification of Applicants, the objective of the evaluation should be to identify Qualified Applicants that have the requisite capability to take up the PPP Project; and

(c) the criteria or conditions, if any, for the disqualification of Applicants, such as, Conflict of Interest, national security and other relevant considerations.

Rule 41: Eligibility of Applicants

For determining the eligibility of Applicants for their qualification here under, the following shall apply:

(a) The Applicant may be a single entity or a consortium. However, no Applicant applying individually or as a member of a consortium, as the case may be, can be member of another Applicant;

(b) An Applicant may be a natural person, or a private entity, or a combination thereof, or a combination with a government owned entity (provided that such government owned entity(ies) do not have a controlling interest in such combination) with a formal intent to enter into an agreement or under an existing agreement to form a consortium.

Rule 42: Number of applications

No Applicant shall submit more than one Application for the PPP Project. An Applicant applying individually or as a member of a consortium shall not be entitled to submit more than one application either individually or as a member of any consortium, as the case may be.

Rule 43: Qualifying criteria

1. The qualifying criteria used by the Contracting Authority to evaluate the responses to the RFQ shall be objective, equitable, unambiguous, and shall be clearly stated in the RFQ.

2. The qualifying criteria shall cover the following aspects of the Applicant:

   (a) the Applicant's experience and track record in delivering projects of similar nature:

   (b) the Applicant's ability to deliver against the physical aspects of the PPP Project and, importantly, its ability and track record in delivering services under long-term contractual arrangements. Criteria for evaluation of experience shall be defined in terms of any or all of the following, based on the nature of the PPP Project:

      (i) Minimum number of projects of more than a specified capacity developed/ constructed/ operated;

      (ii) Minimum number of projects of more than a specified Project Value developed/ constructed/ operated;

      (iii) minimum number of contracts for operation and maintenance of similar facility; and

      (iii) any other criteria suitable for the need of the PPP Project.

   (c) the capability of the Applicant to invest the capital that would be needed for the PPP Project:

   (d) the ability of the Applicants to secure adequate funds, since PPP Projects normally require the Concessionaire to finance a substantial part of the Project Value, if not the whole. A private entity with marginal profits and a weak balance sheet will be unlikely to secure the required finance on competitive terms or terms acceptable to the Appropriate Government.

   (e) the ability of the Applicant to support the contractual arrangements over the contract term.

3. Criteria for evaluation of financial capability shall be defined in terms of any or all of the following:

(a) net worth of the Applicant defined as the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders;

(b) average annual turnover defined as the simple average of sales figures of the Applicant for the immediately preceding three years derived from audited financial statements;

(c) average net cash accrual defined as the sum of profit after tax and depreciation for the immediately preceding three years derived from audited financial statements; and

(d) Any other criteria suitable for the need of the PPP Project.

4. Based on the nature of the PPP Project, the Contracting Authority may, in addition to the above, specify qualifying criteria in relation to the following areas:

(a) Existing commitment of the Applicant and capacity to deliver on the PPP Project in addition to the existing commitments;

(b) Proposed team of experts, if the PPP Project requires specialised technical expertise; and

(c) Experience of Applicant or the proposed team for working in local conditions. This aspect is critical if the local conditions have a material impact on the technical solution or operation of the proposed facility or service.

5. The Independent Monitor shall review the qualifying criteria.

Rule 44: Schedule of RFQ

The following minimum periods shall be followed by the Contracting Authority while determining the schedule of the qualification process:

(a) The Due Date shall be no later than 4 (Four) weeks from the date of advertisement/notification of the RFQ;

(b) The Pre-application meeting shall be held not less than 2 (two) weeks before the Due Date;

(c) The clarifications on their queries of Applicants shall be issued not less than 1 (one) week before the Due Date; and

(d) Corrigenda or notifications of amendments in the RFQ shall be issued not less than 1 (one) week before the Due Date.

Rule 45: Removal of Conflict of Interest

The Contracting Authority may allow an Applicant, within 10 (ten) days after the Due Date, to remove from its consortium any member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

Rule 46: Opening of Applications

1. The Contracting Authority shall open the Applications on the Due Date, and at the time and place and in the manner and procedure specified in the RFQ in the presence of Applicants who choose to attend.

2. The Contracting Authority may in exceptional circumstances defer the date for opening of the Applications and record in writing the reasons therefor.

3. Until the opening of the Applications, the Project Officer shall ensure that the Applications remain unopened and are stored in secure location.

4. All Applicants who have submitted Applications, or their representatives, shall be permitted by the Contracting Authority to participate in the opening of Applications.

Rule 47: Evaluation of Applications

1. Submitted RFQ Applications shall be evaluated by the Tender Evaluation Committee using the qualifying criteria as specified in the RFQ.

2. The Applicants shall be assessed on the basis of their respective aggregate experience scores and Applicants attaining aggregate experience scores beyond the pre-specified minimum threshold shall be qualified for submission of Bids or the next stage of the Tender Proceedings, as the case may be.

Rule 48: Notification of qualification

1. The Contracting Authority shall promptly notify each Applicant in writing whether or not it has been qualified.

2. The Contracting Authority shall make available to any person, the names of all Applicants that have been qualified.

3. Only Applicants who have qualified are entitled to participate further in the Tender Proceedings.

Chapter IX: REQUEST FOR PROPOSAL

Rule 49: Request for Proposal

1. The Executing agency/authority shall prepare the RFP and the Draft Concession Agreement.

2. The RFP shall formally solicit binding Final Offer from Bidders.

3. The Request for Proposal shall necessarily have the following components:

   (a) Feasibility Report/ Project Information Memorandum:

   This component of the RFP is directed towards providing such information to Bidders that is adequate for them to evaluate the PPP Project and estimate their Final Offer. Such information would include, but would not be limited to:

   (i) Project objectives and rationale;

   (ii) Site details;

   (iii) Role of the Appropriate Government, key agency and stakeholders;

   (iv) Project scope in accordance with Rule 80: and

   (v) Output specifications;

   (b) Instruction to Bidders:

   This component of the RFP is directed towards defining the process of Bid submission and evaluation. This section shall include all procedures, terms and conditions which should be followed by the Bidders for submission of their Bids and which would be followed by the Execution agency/authority in accepting and evaluating the Bids;

   (c) The draft Concession Agreement which shall govern the contractual relations between the Concessionaire and Execution agency/authority. The draft Concession Agreement shall contain rights and obligations of both the parties, definition of the subject matter of the agreement, payment terms, performance obligations, defaults and their consequences, events of termination and other ancillary clauses. The provisions of the draft Concession Agreement shall necessarily cover:

   (i) Recitals- identifying the parties to the contract, offer and acceptance;

   (ii) Definitions- defining the key terms of the contract to ensure uniformity of usage and interpretation throughout the document;

   (iii) Scope of the PPP Project;

(iv) Grant of concession, whereby the Execution agency/authority grants the concession to the Concessionaire subject to the terms and conditions of the Concession Agreement;

(v) Conditions precedent;

(vi) Obligations of the Concessionaire;

(vii) Obligations of the Execution agency/authority;

(viii) Representations and warranties of both the parties;

(ix) Form and value of Performance Security to be submitted by the Concessionaire;

(x) Matter related to the site;

(xi) The construction of the facility including minimum technical requirements thereof, date for completion of construction etc.;

(xii) Performance monitoring during construction including key performance indicators, monitoring responsibilities and related provisions;

(xiii) Completion of construction including provisions for testing, approval and certification;

(xiv) Change in scope during the contract period;

(xv) Operation and maintenance of the facility and provision of service including minimum technical requirements;

(xvi) Performance monitoring during operations and maintenance including key performance indicators, monitoring and reporting responsibilities and related provisions;

(xvii) Appointment, role and functions, remuneration and reporting requirements of Independent Engineer;

(xviii) Financial close;

(xix) Grant or revenue share/ premium;

(xx) Payments by users, authority for tariff fixation, procedure of revision of tariff and related provisions;

(xxi) Collection of user charges, including allocation of the authority to collect and retain user charges;

(xxii) Financial aspects of the contract including escrow account, other payments between the parties to the contract;

(xxiii) Maintenance of books of accounts and audit requirements;

(xxiv) Insurance;

(xxv) Force Majeure – definition, procedure for recognition under the contract, consequences and compensation on termination due to occurrence of Force Majeure events;

(xxvi) Events of default and consequences of default;

(xxvii) Termination of the contract and consequences of termination;

(xxviii) Assignments and charges;

(xxix) Change in law including consequences for change in law;

(xxx) Liability and indemnity; and

(xxxi) Dispute resolution.

Rule 50: Project Scope

1. The Execution agency/authority shall set out the detailed description of the PPP Project and the project scope in the RFP.

2. To the extent practicable, the description of the PPP Project and project scope shall be objective, functional and generic, and shall set out the relevant technical, quality and performance characteristics expected. There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the project scope and specifications and provided that words such as "or equivalent" are included.

Rule 51: Evaluation Criteria

1. The Execution agency/authority shall select a Preferred Bidder solely on the basis of highest or the lowest Final Offer, as specified in the RFP.

2. The criterion specified in the RFP may be:

   (a) grant sought,

   (b) expected revenue,

   (c) tariff,

   (d) present value of lifecycle cost,

   (e) period of the concession,

   (f) upfront premium,

   (g) equity stake,

   (h) extent/share of subsidized facilities to the Execution agency/authority;

   (i) revenue share

3. RFP shall clearly and specifically define the form and content of the Final Offer and state that Preferred Bidder shall be selected on the basis of the most advantageous Final Offer.

Rule 52: Schedule of Bid Process

The following minimum periods shall be followed by the Execution agency/authority while determining the schedule of the RFP Stage:

(a) The Due Date shall be no later than 2 (Two) weeks from the date of advertisement/notification of the RFP;

(b) Corrigenda or notifications of amendments in RFP or Draft Concession Agreement shall be issued not less than 1 (one) weeks before the Due Date.

Rule 53: Obtaining approval to proceed with issue of RFP

1. Prior to the issuance of the RFP and the Concession Agreement to all Bidders, the Execution agency/authority shall obtain an approval from relevant authorities

Rule 54: Data room

1. The Execution agency/authority shall maintain a data room where project-specific information shall be kept.

2. All Bidders shall be allowed to access the data room during reasonable working hours. The data room will be maintained by the Execution agency/authority until the completion of the RFP Stage.

3. The data room shall be maintained in a single location, for a limited period of time, where the Bidders shall be permitted only to review such documents, which otherwise are not allowed to be distributed.

4. The location and rules for accessing the data room should be stated in the RFP.

5. The Execution agency/authority may also provide a virtual data room through a secure website where project-specific information can be accessed online by authorised viewers.

Rule 55: Change in composition of consortium

1. Except in case of 'Force Majure', change in composition from RFQ to RFP shall not be permitted. The discretion lies with Execution authority/agency

Rule 56: Effectiveness of Bids

1. Bids shall be in effect during the period of time specified in the RFP.

2. Prior to the expiry of the period of effectiveness of Bids, the Execution agency/authority may request Bidders to extend the period for an additional specified period of time. A Bidder may refuse the request without forfeiting its Bid Security.

3. If a Bidder agrees to extend the period of effectiveness of its Bid, the Execution agency/authority shall procure an extension of the period of effectiveness of Bid security as provided by such Bidder or call for new Bid security for the additional specified period of time.

4. If a Bidder has not extended the Bid Security, or has not provided a fresh Bid Security, it shall be considered as refusal of the request to extend the period of effectiveness of its Bid.

Rule 57: Opening of Bids

1. The Execution agency/authority shall open the Bids on the Due Date, and at the time and place and in the manner and procedure specified in the RFP in the presence of Applicants who choose to attend.

2. The Execution agency/authority may in exceptional circumstances defer the date for opening of the bids and record in writing the reasons therefor.

3. Until the opening of the Bids, the Execution authority/agency shall ensure that the Bids and Final Offer remain unopened.

4. All Bidders who have submitted Bids, or their representatives, shall be permitted by the Execution agency/authority to participate in the opening of Bids.

Rule 58: Evaluation of Bids

1. Evaluation of submitted Bids shall be carried out by the Tender Evaluation Team, assisted by the transaction advisor where necessary. The Bid evaluation shall follow the pre-determined criteria as specified in the RFP.

2. The Independent Monitor shall be present for all Bid evaluation meetings and minutes of the proceedings of Bid evaluation shall be maintained as part of record of Tender Proceedings.

Rule 59: Prohibition of negotiations

No negotiations shall take place between the Execution agency/authority and a Bidder with respect to a Bid submitted by the Bidder.

Rule 60: Selection of the Preferred Bidder

1. All Bids adjudged responsive shall be ranked in accordance with the evaluation criteria specified in RFP and the first ranked Bidder shall be the Preferred Bidder.

2. In the event that the first ranked Bidder withdraws or is not selected for any reason, in the first instance (the "**first round of bidding**"), the Execution agency/authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid first ranked Bidder (the "**second round ofbidding**").

3. If in the second round of bidding, only one Bidder matches the aforesaid first ranked Bidder, it shall be selected the Preferred Bidder. If two or more Bidders match the said first ranked Bidder in the second round of bidding, then the Bidder whose Bid was ranked higher as compared to other Bidder(s) in the first round of bidding shall be selected the Preferred Bidder. For example, if the third and fifth ranked Bidders in the first round of bidding offer to match the said first ranked Bidder in the second round of bidding, the said third rank Bidder shall be the Selected Bidder.

4. In the event that no Bidder offers to match the said first ranked Bidder in the second round of bidding as specified under this Rule, the Execution agency/authority may in its discretion, either initiate a new Tender Proceeding or abandon the PPP Project.

5. The results of evaluation of Bids along with the report of Independent Monitor shall be submitted to the Approving Authority, or to such competent entity to which power for approval has been delegated specifically, for approval.

6. The Preferred Bidder shall be notified by the Execution agency/authority after obtaining approval of the Approving Authority or from such competent entity to which power for approval has been delegated specifically.

7. Simultaneous with the receipt of approval of the Approving Authority, the Execution agency/authority shall communicate to other Bidders about the selection of the Preferred Bidder, and its intention to execute the Concession Agreement with the Preferred Bidder.

8. After selection, a letter of award (the "**Letter of Award**") shall be issued, in duplicate, by the Execution agency/authority to the Preferred Bidder with the condition that the Preferred Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return a duplicate copy of the LOA in acknowledgement thereof.

Rule 61: Treatment of sole Bid

1. In case of the competitive bidding process resulting into a sole Bid, the Execution agency/authority shall, either:

   (a) accept the sole Bid, if the Tender Evaluation Committee is of the opinion that retendering will not yield more Bids and there is a clear value for money in accepting the sole Bid, or

   (b) reject the sole Bid.

2. In case the sole Bid is accepted, negotiation with the Bidder to ascertain better terms for the Execution agency/authority may be undertaken provided these negotiations result in better terms for Execution agency/authority than outlined in RFP document.

Rule 62: Treatment of two equal Bids

In the event that two or more Bidders have quoted the same Final Offer, Execution agency/authority shall identify the Preferred Bidder by adopting one of the following approaches, which shall be pre-specified in the Tender Documents:

(a) by taking in account the aggregate experience score of each such bidder from the RFQ Stage, wherein the Bidder with higher score shall be adjudged the Preferred Bidder;
(b) asking the two Bidders to provide their best and final offer. The Bidder offering the most advantageous Final offer shall be adjudged the winner.

Rule 63: Treatment of speculative Bids

1. The Execution agency/authority may reject a Bid if it has determined that the Final Offer in combination with other constituent elements of the submission is abnormally low or abnormally high in relation to the subject matter of the procurement and raises concerns with the Execution agency/authority as to the ability of the Bidder that presented that submission to perform the PPP contract, provided that the Execution agency/authority has:

   (a) requested in writing from the Bidder details of the submission that gives rise to concerns as to the ability of the Bidder to perform the PPP contract; and

(b) taken account of any information provided by the Bidder following this request, and the information included in the submission, but continues, on the basis of all such information, to hold concerns.

2. The decision of the Execution agency/authority to reject a submission in accordance with this Rule and the reasons for that decision, and all communications with the Bidder under this Rule, shall be included in the record of the Tender Proceedings. The decision of the Execution agency/authority and the reasons therefor shall be promptly communicated to the Bidder concerned.

Rule 64: Contract finalization and award

1. Subject to fulfilment by the Preferred Bidder of the requirements specified in the RFP and of the LOA, the Execution agency/authority shall execute the Concession Agreement with the Preferred Bidder.

2. Except as provided Rule 92:, the Execution agency/authority shall not engage in negotiations on or modifications to the draft Concession Agreement as per the RFP.

Dr.K.S.JAWAHAR REDDY
PRINCIPAL SECRETARY TO GOVERNMENT

//FORWARDED BY ORDER//

SECTION OFFICER